BUTLER v. NEWS-LEADER CO.

June 15, 1905.

[51 S. E. 213.]

LIBEL—COPYING NEWSPAPER ITEM—MISTAKEN IDENTITY

Defendant copied from reputable newspapers an article emanating from Chicago: That "Annie Oakley," daughter-in-law of Buffalo Bill, and the most famous rifle shot in the world, was in jail on a charge of theft; that she was the woman for whose marksmanship King Edward once led the applause; that when arrested she gave the name of Elizabeth Cody, but was not recognized as Col. Cody's daughter-in-law; that she pleaded guilty, and gave as an excuse the use of drugs; that the beauty of the woman whom the crowd at the World's Fair admired was gone, though she was but 28 years old; that her husband, Sam Cody, was dead and their son was with Col. Cody on his ranch; and that she left Buffalo Bill two years ago, and had since been drifting around the country with stray shows. The woman who was in the police court was Mrs. Cody, who had given exhibitions of rifle shooting in various companies, including a Wild West Show, but not that of Buffalo Bill, under the show name of "Any O'Klay," which, by reason of similarity of sound, had often been mistaken for "Annie Oakley." Plaintiff, Mrs. B., had also been a celebrated rifle shot, exhibiting in Buffalo Bill's Wild West Show under the show name of Annie Oakley, but she had retired several years before, and had since been living with her family in New Jersey. Her name had never been Cody, and she had never gone by that name, and was not a relative of Col. Cody. Defendant knew nothing of the matter, further than the newspaper article, and there was no actual malice on its part. *Held*, that an instruction that if the jury believed that the article, as published, did not refer to plaintiff, but to a person who was sometimes known as Any O'Klay, and used this name to attract the notice of the public, and was not, in its description or identification, such as to lead those who knew or know of plaintiff to believe that the article was intended to refer to plaintiff, they should find for defendant, is correct, and authorized by the evidence.

DAVIS' ADM'X et al. v. DAVIS et al.

June 15, 1905.

[51 S. E. 216.]

LIMITATIONS—SUSPENSION OF RIGHT OF ACTION—LACHES—EXCUSABLE DELAY—ESTOPPEL—FAILURE TO SUE AT PARTICULAR TIME—INCONSISTENT POSITIONS.

1. Where creditors accepted from their debtor certain securities under an agreement that when and if paid these securities should be in full settlement of the debt, right of action on the debt was suspended during the currency of the securities.

2. Plaintiffs loaned a large sum of money to their brother without security, subsequently forgiving him one half the debt, and accepting

certain securities for the other half, under an agreement that, if paid, they should constitute full satisfaction. The brother died shortly after this agreement, leaving his whole estate to his wife for life, and plaintiffs took no steps to interfere with her possession, but commenced an action against the brother's personal representatives within less than two years after her death to recover the unpaid balance. *Held*, that plaintiffs were not guilty of laches.

3. The failure of a creditor to enforce his claim at a time when prices of real estate were high, so that the claim might have been satisfied by the sale of a few acres of the debtor's land, did not estop the creditor from enforcing the claim afterward, when prices had fallen.

4. Creditors of the estate of a father, who were also creditors of the estate of his son, filed suits against both estates. The personal representative of the father was not a party to the suits against the estate of his son. In those suits a decree was rendered subjecting the son's interest in lands derived from the estate of the father to sale, all the suits being heard together. *Held*, that the creditors were not inconsistent in failing to assert their debt against the estate of the father in the suits against the son's estate, and so were not precluded from maintaining their bill against the father's estate.

LANGSTON v. BASSETTE et al.

June 15, 1905.

[51 S. E. 218.]

INFANTS—GUARDIAN AD LITEM—NECESSITY OF APPOINTMENT.

1. Where it clearly appears that a decree is in favor of an infant defendant, failure to appoint a guardian *ad litem* for him is not reversible error.

2. A decree finding a will valid is not in favor of an infant adopted son of testatrix, who was her only heir, and would, under Va. Code 1904, sec. 2614a, take her whole estate if the will was invalid, and hence failure to appoint a guardian *ad litem* for the son in a proceeding to contest the will was reversible error.

RICHARDSON v. WYMER.

June 22, 1905.

[51 S. E. 219.]

EJECTMENT—EVIDENCE OF TITLE—SUFFICIENCY— JUDGMENT — SATISFACTION —UNCOMPLETED SALE UNDER EXECUTION—RIGHT TO SECOND EXECUTION.

1. A plaintiff in ejectment, who shows title as purchaser at a sale under an execution on a judgment against one to whom the land was awarded in a partition suit, shows title sufficient to maintain the action.

2. Where an execution was issued, and a sale was made under it, but no part of the purchase price was paid, the judgment was not satisfied, and a second execution might issue.